

Senate Engrossed

State of Arizona
Senate
Forty-fifth Legislature
First Regular Session
2001

CHAPTER 162

SENATE BILL 1020

AN ACT

AMENDING SECTIONS 20-158, 20-466, 20-481.21, 20-485.03 AND 20-488.07, ARIZONA
REVISED STATUTES; RELATING TO THE DEPARTMENT OF INSURANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-158, Arizona Revised Statutes, is amended to
3 read:

4 20-158. Report of examinations by director; information sharing

5 A. The director shall make a full written report of each examination
6 ~~and such report shall be certified to by.~~ The director or the examiner in
7 charge of the examination SHALL CERTIFY THE REPORT.

8 B. The director shall furnish ~~PROVIDE~~ a copy of the report to the
9 person examined not less than ten days prior ~~to BEFORE~~ filing such THE report
10 ~~in his office.~~ If the person so requests ~~MAKES A REQUEST~~ in writing within
11 the ten day period, the director shall consider the ANY objections of ~~such~~
12 THE person MAY HAVE to the PROPOSED report ~~as proposed,~~ and shall not so file
13 the report until after modifications, if any, have been made therein as
14 MAKING ANY AMENDMENTS the director deems proper.

15 C. The report, when filed, ~~shall be~~ IS admissible in evidence in any
16 action or proceeding brought by the director against the person examined, or
17 its officers or agents. The director or his THE DIRECTOR'S examiners may at
18 any time testify and offer other proper evidence as to information secured
19 during the course of an examination, whether or not a written report of the
20 examination has at that time been either made, served or filed in the
21 director's office.

22 D. The director may withhold from public inspection any examination
23 or investigation report for ~~so~~ AS long as he THE DIRECTOR deems prudent.

24 E. THE DIRECTOR MAY DISCLOSE THE NONPUBLIC CONTENT OF A REPORT OF
25 EXAMINATION, A PRELIMINARY REPORT OR ANY OTHER MATTER RELATING TO A REPORT
26 TO THE INSURANCE DEPARTMENT OF ANY OTHER STATE OR JURISDICTION, TO LAW
27 ENFORCEMENT OFFICIALS OF THIS OR ANY OTHER STATE OR JURISDICTION OR TO AN
28 AGENCY OF THE FEDERAL GOVERNMENT IF THE AGENCY OR OFFICIAL RECEIVING THE
29 REPORT OR INFORMATION AGREES IN WRITING TO HOLD THE INFORMATION CONFIDENTIAL.

30 F. THE DIRECTOR MAY:

31 1. SHARE NONPUBLIC DOCUMENTS, MATERIALS OR OTHER INFORMATION WITH
32 OTHER STATE, FEDERAL AND INTERNATIONAL REGULATORY AGENCIES, WITH THE NATIONAL
33 ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES AND SUBSIDIARIES
34 AND WITH STATE, FEDERAL AND INTERNATIONAL LAW ENFORCEMENT AUTHORITIES IF THE
35 RECIPIENT AGREES AND WARRANTS THAT IT HAS THE AUTHORITY TO MAINTAIN THE
36 CONFIDENTIALITY AND PRIVILEGED STATUS OF THE DOCUMENTS, MATERIALS OR OTHER
37 INFORMATION.

38 2. RECEIVE DOCUMENTS, MATERIALS AND OTHER INFORMATION FROM THE
39 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES AND
40 SUBSIDIARIES AND FROM REGULATORY AND LAW ENFORCEMENT OFFICIALS OF OTHER
41 JURISDICTIONS AND SHALL MAINTAIN AS CONFIDENTIAL OR PRIVILEGED ANY DOCUMENT,
42 MATERIAL OR OTHER INFORMATION RECEIVED WITH NOTICE OR THE UNDERSTANDING THAT
43 IT IS CONFIDENTIAL OR PRIVILEGED UNDER THE LAWS OF THE JURISDICTION THAT IS
44 THE SOURCE OF THE DOCUMENT, MATERIAL OR OTHER INFORMATION.

1 3. ENTER INTO AGREEMENTS THAT GOVERN THE SHARING AND USE OF DOCUMENTS,
2 MATERIALS AND OTHER INFORMATION AND THAT ARE CONSISTENT WITH THIS SECTION.

3 G. A DISCLOSURE TO OR BY THE DIRECTOR PURSUANT TO THIS SECTION OR AS
4 A RESULT OF SHARING INFORMATION PURSUANT TO SUBSECTION F IS NOT A WAIVER OF
5 ANY APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN THE DOCUMENTS,
6 MATERIALS OR OTHER INFORMATION DISCLOSED OR SHARED.

7 Sec. 2. Section 20-466, Arizona Revised Statutes, is amended to read:
8 20-466. Fraud unit; powers; information sharing; duty of
9 insurers

10 A. A fraud unit is established in the department of insurance.

11 B. The fraud unit shall work in conjunction with the department of
12 public safety.

13 C. The director may investigate any act or practice of fraud
14 prohibited by section 20-466.01 and any other act or practice of fraud
15 against an insurer or entity licensed under this title. The director shall
16 administer the fraud unit.

17 D. The director may request the submission of papers, documents,
18 reports or other evidence relative to an investigation under this section.
19 The director may issue subpoenas and take other actions pursuant to section
20 20-160. The materials are privileged and confidential until the director
21 completes the investigation. ~~THE ANY DOCUMENTS, materials are OR OTHER~~
22 ~~INFORMATION THAT IS PROVIDED TO THE DIRECTOR PURSUANT TO THIS SECTION IS~~ not
23 ~~subject to discovery or subpoena until opened for public inspection by the~~
24 ~~fraud unit unless the director consents or, after notice and a hearing, a~~
25 ~~court determines that the director would not be unduly burdened by compliance~~
26 ~~with the subpoena. THE DIRECTOR MAY USE THE DOCUMENTS, MATERIALS OR OTHER~~
27 ~~INFORMATION IN THE FURTHERANCE OF ANY REGULATORY OR LEGAL ACTION BROUGHT AS~~
28 ~~A PART OF THE DIRECTOR'S OFFICIAL DUTIES.~~

29 E. If ~~THE DOCUMENTS, materials OR OTHER INFORMATION~~ the director seeks
30 to obtain by request ~~are IS~~ located outside this state, the person requested
31 to provide the ~~DOCUMENTS, materials OR OTHER INFORMATION~~ shall arrange for
32 the fraud unit or a representative, including an official of the state in
33 which the ~~DOCUMENTS, materials are OR INFORMATION~~ IS located, to examine the
34 ~~DOCUMENTS, materials OR OTHER INFORMATION where the materials are IT IS~~
35 located. The director may respond to similar requests from other states.

36 F. An insurer that believes a fraudulent claim has been or is being
37 made shall send to the director, on a form prescribed by the director,
38 information relative to the claim including the identity of parties claiming
39 loss or damage as a result of an accident and any other information the fraud
40 unit may require. The director shall review the report and determine if
41 further investigation is necessary. If the director determines that further
42 investigation is necessary, the director may conduct an independent
43 investigation to determine if fraud, deceit or intentional misrepresentation
44 in the submission of the claim exists. If the director is satisfied that
45 fraud, deceit or intentional misrepresentation of any kind has been committed

1 in the submission of a claim, the director may report the violations of the
2 law to the reporting insurer, to the appropriate licensing agency as defined
3 in section 20-466.04 and to the appropriate county attorney or the attorney
4 general for prosecution.

5 G. THE DIRECTOR MAY:

6 1. SHARE NONPUBLIC DOCUMENTS, MATERIALS OR OTHER INFORMATION WITH
7 OTHER STATE, FEDERAL AND INTERNATIONAL REGULATORY AGENCIES, WITH THE NATIONAL
8 ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES AND SUBSIDIARIES
9 AND WITH STATE, FEDERAL AND INTERNATIONAL LAW ENFORCEMENT AUTHORITIES IF THE
10 RECIPIENT AGREES AND WARRANTS THAT IT HAS THE AUTHORITY TO MAINTAIN THE
11 CONFIDENTIALITY AND PRIVILEGED STATUS OF THE DOCUMENTS, MATERIALS OR OTHER
12 INFORMATION.

13 2. RECEIVE DOCUMENTS, MATERIALS AND OTHER INFORMATION FROM THE
14 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES AND
15 SUBSIDIARIES AND FROM REGULATORY AND LAW ENFORCEMENT OFFICIALS OF OTHER
16 JURISDICTIONS AND SHALL MAINTAIN AS CONFIDENTIAL OR PRIVILEGED ANY DOCUMENT,
17 MATERIAL OR OTHER INFORMATION RECEIVED WITH NOTICE OR THE UNDERSTANDING THAT
18 IT IS CONFIDENTIAL OR PRIVILEGED UNDER THE LAWS OF THE JURISDICTION THAT IS
19 THE SOURCE OF THE DOCUMENT, MATERIAL OR OTHER INFORMATION.

20 3. ENTER INTO AGREEMENTS THAT GOVERN THE SHARING AND USE OF DOCUMENTS,
21 MATERIALS AND OTHER INFORMATION AND THAT ARE CONSISTENT WITH THIS SECTION.

22 H. A DISCLOSURE TO OR BY THE DIRECTOR PURSUANT TO THIS SECTION OR AS
23 A RESULT OF SHARING INFORMATION PURSUANT TO SUBSECTION G OF THIS SECTION IS
24 NOT A WAIVER OF ANY APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN THE
25 DOCUMENTS, MATERIALS OR OTHER INFORMATION DISCLOSED OR SHARED.

26 ~~G. I. Beginning on July 1, 1997,~~ The director shall annually assess
27 each insurer as defined in section 20-441, subsection B authorized to
28 transact business in this state up to seven hundred dollars for the
29 administration and operation of the fraud unit and the prosecution of fraud
30 pursuant to this section. Monies collected shall be deposited in the state
31 general fund. The director shall annually revise the fee in such a manner
32 that the revenue derived from the fees equals at least ninety-five per cent
33 but not more than one hundred ten per cent of the appropriated budget of the
34 fraud unit for the prior fiscal year.

35 ~~H. J.~~ A person, or an officer, employee or agent of the person acting
36 within the scope of employment or agency of that officer, employee or agent,
37 who in good faith files a report or provides other information to the fraud
38 unit pursuant to this section is not subject to civil or criminal liability
39 for reporting that information to the fraud unit.

40 Sec. 3. Section 20-481.21, Arizona Revised Statutes, is amended to
41 read:

42 20-481.21. Confidential records; consent to release; release
43 without consent; information sharing

44 A. All information, documents, and copies thereof MATERIALS OR OTHER
45 INFORMATION THAT IS IN THE POSSESSION OR CONTROL OF THE DEPARTMENT AND THAT

1 IS obtained by or disclosed to the director or any other person in the course
 2 of a filing, an examination or AN investigation made pursuant to sections
 3 20-481.03, 20-481.10, 20-481.12 and 20-481.20 shall be given IS confidential
 4 treatment AND PRIVILEGED, IS NOT SUBJECT TO TITLE 39, CHAPTER 1, ARTICLE 2
 5 AND IS not subject to subpoena, and not made public by the. THE DIRECTOR MAY
 6 USE THE DOCUMENTS, MATERIALS OR OTHER INFORMATION IN THE FURTHERANCE OF ANY
 7 REGULATORY OR LEGAL ACTION BROUGHT AS A PART OF THE DIRECTOR'S OFFICIAL
 8 DUTIES. The director or any other person, SHALL NOT MAKE THE DOCUMENTS,
 9 MATERIALS OR OTHER INFORMATION PUBLIC without the prior written consent of
 10 the insurer to which it pertains unless the director DETERMINES, after giving
 11 the insurer and its affiliates who would be affected thereby BY THE
 12 PUBLICATION notice and AN opportunity to be heard, determines that the
 13 interests of policyholders, shareholders or the public will be served by the
 14 publication thereof, in which event he. THE DIRECTOR may THEN publish all
 15 or any part thereof in such a manner as he may deem OF THE DOCUMENTS,
 16 MATERIALS OR OTHER INFORMATION AS THE DIRECTOR DEEMS appropriate.

17 B. THE DIRECTOR MAY:

18 1. SHARE NONPUBLIC DOCUMENTS, MATERIALS OR OTHER INFORMATION WITH
 19 OTHER STATE, FEDERAL AND INTERNATIONAL REGULATORY AGENCIES, WITH THE NATIONAL
 20 ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES AND SUBSIDIARIES
 21 AND WITH STATE, FEDERAL AND INTERNATIONAL LAW ENFORCEMENT AUTHORITIES IF THE
 22 RECIPIENT AGREES AND WARRANTS THAT IT HAS THE AUTHORITY TO MAINTAIN THE
 23 CONFIDENTIALITY AND PRIVILEGED STATUS OF THE DOCUMENTS, MATERIALS OR OTHER
 24 INFORMATION.

25 2. RECEIVE DOCUMENTS, MATERIALS AND OTHER INFORMATION FROM THE
 26 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES AND
 27 SUBSIDIARIES AND FROM REGULATORY AND LAW ENFORCEMENT OFFICIALS OF OTHER
 28 JURISDICTIONS AND SHALL MAINTAIN AS CONFIDENTIAL OR PRIVILEGED ANY DOCUMENT,
 29 MATERIAL OR OTHER INFORMATION RECEIVED WITH NOTICE OR THE UNDERSTANDING THAT
 30 IT IS CONFIDENTIAL OR PRIVILEGED UNDER THE LAWS OF THE JURISDICTION THAT IS
 31 THE SOURCE OF THE DOCUMENT, MATERIAL OR OTHER INFORMATION.

32 3. ENTER INTO AGREEMENTS THAT GOVERN THE SHARING AND USE OF DOCUMENTS,
 33 MATERIALS AND OTHER INFORMATION AND THAT ARE CONSISTENT WITH THIS SECTION.

34 C. A DISCLOSURE TO OR BY THE DIRECTOR PURSUANT TO THIS SECTION OR AS
 35 A RESULT OF SHARING INFORMATION PURSUANT TO SUBSECTION B OF THIS SECTION IS
 36 NOT A WAIVER OF ANY APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN THE
 37 DOCUMENTS, MATERIALS OR OTHER INFORMATION DISCLOSED OR SHARED.

38 Sec. 4. Section 20-485.03, Arizona Revised Statutes, is amended to
 39 read:

40 20-485.03. Maintenance of records; access; confidentiality;
 41 information sharing; examination

42 A. Every administrator shall maintain at such THE administrator's
 43 principal administrative office for the duration of the written agreement
 44 required by section 20-485.01 and for five years thereafter adequate books
 45 and records of all transactions among such THE administrator, insurers and

1 insured persons. Such THE books and records shall be maintained in
2 accordance with prudent standards of insurance record keeping.

3 B. The director shall have access to books and records maintained by
4 the administrator for the purpose of examination, audit and inspection. Any
5 trade secrets contained in such THE books and records, including the identity
6 and addresses of policyholders and certificate holders, shall be
7 confidential, except the director may use such THE information in any
8 proceedings instituted against the administrator.

9 C. THE DIRECTOR MAY:

10 1. SHARE NONPUBLIC DOCUMENTS, MATERIALS OR OTHER INFORMATION WITH
11 OTHER STATE, FEDERAL AND INTERNATIONAL REGULATORY AGENCIES, WITH THE NATIONAL
12 ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES AND SUBSIDIARIES
13 AND WITH STATE, FEDERAL AND INTERNATIONAL LAW ENFORCEMENT AUTHORITIES IF THE
14 RECIPIENT AGREES AND WARRANTS THAT IT HAS THE AUTHORITY TO MAINTAIN THE
15 CONFIDENTIALITY AND PRIVILEGED STATUS OF THE DOCUMENTS, MATERIALS OR OTHER
16 INFORMATION.

17 2. RECEIVE DOCUMENTS, MATERIALS AND OTHER INFORMATION FROM THE
18 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES AND
19 SUBSIDIARIES AND FROM REGULATORY AND LAW ENFORCEMENT OFFICIALS OF OTHER
20 JURISDICTIONS AND SHALL MAINTAIN AS CONFIDENTIAL OR PRIVILEGED ANY DOCUMENT,
21 MATERIAL OR OTHER INFORMATION RECEIVED WITH NOTICE OR THE UNDERSTANDING THAT
22 IT IS CONFIDENTIAL OR PRIVILEGED UNDER THE LAWS OF THE JURISDICTION THAT IS
23 THE SOURCE OF THE DOCUMENT, MATERIAL OR OTHER INFORMATION.

24 3. ENTER INTO AGREEMENTS THAT GOVERN THE SHARING AND USE OF DOCUMENTS,
25 MATERIALS AND OTHER INFORMATION AND THAT ARE CONSISTENT WITH THIS SECTION.

26 D. A DISCLOSURE TO OR BY THE DIRECTOR PURSUANT TO THIS SECTION OR AS
27 A RESULT OF SHARING INFORMATION PURSUANT TO SUBSECTION C OF THIS SECTION IS
28 NOT A WAIVER OF ANY APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN THE
29 DOCUMENTS, MATERIALS OR OTHER INFORMATION DISCLOSED OR SHARED.

30 ~~E.~~ E. The insurer ~~shall retain~~ RETAINS the right of continuing access
31 to books and records maintained by the administrator sufficient to permit the
32 insurer to fulfill all of its contractual obligations to insured persons,
33 subject to any restrictions in the written agreement between the insurer and
34 administrator on the proprietary rights of the parties in such books and
35 records.

36 ~~D.~~ F. The director may require an administrator to provide, on a
37 quarterly basis in a form acceptable to the director, additional information
38 which THAT is necessary for the protection of the public.

39 ~~E.~~ G. The director may examine the business practices, books and
40 records of any administrator as often as he THE DIRECTOR deems
41 appropriate. The administrator shall pay the cost of only one such
42 examination in any one EACH year.

1 Sec. 5. Section 20-488.07, Arizona Revised Statutes, is amended to
2 read:

3 20-488.07. Confidentiality; information sharing

4 A. With respect to a domestic insurer or foreign insurer, the director
5 shall keep confidential all information that is contained in RBC reports and
6 that is not required to be set forth in a public annual statement schedule
7 and all RBC plans that are filed with the director, including the results or
8 report of an examination or analysis of an insurer that is performed pursuant
9 to this article and any corrective order that is issued by the
10 director. This information shall not be made public and is not subject to
11 subpoena, except that the director may subpoena the information for the
12 purpose of enforcing the insurance laws of this state.

13 B. An assertion, representation or statement regarding the RBC levels
14 of an insurer or any component derived by any insurer, agent, broker or other
15 person engaged in the transaction of insurance business shall not be
16 published, disseminated, circulated or placed before the public in any
17 printed medium and shall not be advertised, announced or stated through
18 radio, television or any other electronic medium.

19 C. Notwithstanding subsection B, an insurer may publish an
20 announcement in a written publication for the purpose of rebutting a
21 materially false statement that is made with respect to the comparison
22 regarding the insurer's total adjusted capital to its RBC levels or with
23 respect to an inappropriate comparison of any other amount to the insurer's
24 RBC levels, that is published in a written publication and that the insurer
25 is able to demonstrate to the director with substantial proof is false or
26 inappropriate.

27 D. The RBC instructions, RBC reports, adjusted RBC reports, RBC plans
28 and revised RBC plans are intended solely for use by the director in
29 monitoring the solvency of insurers and the need for possible corrective
30 action with respect to insurers. The director shall not use the RBC
31 instructions, RBC reports, adjusted RBC reports, RBC plans and revised RBC
32 plans for rate making, shall not consider or introduce them as evidence
33 in any rate making proceeding and shall not use them to calculate or derive
34 any elements of an appropriate premium level or rate of return for any line
35 of insurance that an insurer or any affiliate is authorized to write.

36 E. THE DIRECTOR MAY:

37 1. SHARE NONPUBLIC DOCUMENTS, MATERIALS OR OTHER INFORMATION WITH
38 OTHER STATE, FEDERAL AND INTERNATIONAL REGULATORY AGENCIES, WITH THE NATIONAL
39 ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES AND SUBSIDIARIES
40 AND WITH STATE, FEDERAL AND INTERNATIONAL LAW ENFORCEMENT AUTHORITIES IF THE
41 RECIPIENT AGREES AND WARRANTS THAT IT HAS THE AUTHORITY TO MAINTAIN THE
42 CONFIDENTIALITY AND PRIVILEGED STATUS OF THE DOCUMENTS, MATERIALS OR OTHER
43 INFORMATION.

1 2. RECEIVE DOCUMENTS, MATERIALS AND OTHER INFORMATION FROM THE
2 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES AND
3 SUBSIDIARIES AND FROM REGULATORY AND LAW ENFORCEMENT OFFICIALS OF OTHER
4 JURISDICTIONS AND SHALL MAINTAIN AS CONFIDENTIAL OR PRIVILEGED ANY DOCUMENT,
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6 IT IS CONFIDENTIAL OR PRIVILEGED UNDER THE LAWS OF THE JURISDICTION THAT IS
7 THE SOURCE OF THE DOCUMENT, MATERIAL OR OTHER INFORMATION.

8 3. ENTER INTO AGREEMENTS THAT GOVERN THE SHARING AND USE OF DOCUMENTS,
9 MATERIALS AND OTHER INFORMATION AND THAT ARE CONSISTENT WITH THIS SECTION.

10 F. A DISCLOSURE TO OR BY THE DIRECTOR PURSUANT TO THIS SECTION OR AS
11 A RESULT OF SHARING INFORMATION PURSUANT TO SUBSECTION E IS NOT A WAIVER OF
12 ANY APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN THE DOCUMENTS,
13 MATERIALS OR OTHER INFORMATION DISCLOSED OR SHARED.

APPROVED BY THE GOVERNOR APRIL 20, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 20, 2001.

Passed the House April 17, 20 01,

by the following vote: 47 Ayes,

6 Nays, 7 Not Voting

[Signature]
Speaker of the House

[Signature]
Chief Clerk of the House

Passed the Senate January 31, 20 01,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

[Signature]
President of the Senate

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

18 day of April, 2001,

at 10:08 o'clock A M.

[Signature]
Secretary to the Governor

Approved this 20 day of

April, 2001,

at 9:02 o'clock A M.

[Signature]
Governor of Arizona

S.B. 1020

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 20 day of April, 2001,

at 12:55 o'clock P M.
[Signature]
Secretary of State